

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL

77-5004

United States Court of Appeals
SECOND CIRCUIT

HOUSEHOLD FINANCE CORPORATION,
Plaintiff-Appellant,

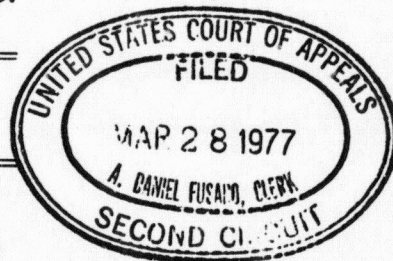
—against—

KEITH ORIN DANNS, a/k/a KEITH O. DANNS,
a/k/a KEITH DANNS,
Defendant-Appellee.

APPENDIX

SEYMOUR R. WEINICK, Esq.
Attorney for Appellant
Office and P. O. Address
25 West 34th Street
New York, New York
(244-1412)

SACHS & SPECTOR, Esqs.
Attorneys for Appellee
570 7th Avenue
New York, N. Y. 10018
(221-1632)



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Docket Entries

NEAHER, J.

NAME OF BANKRUPT/DEBTOR DANNS Keith, Orin			DIST. NO. 207	DIV. NO. 1	DOCKET NO. 76-B-148
Last	First	Middle	CHAPTER OR SECTION		CHECK IF
a/k/a KEITH O. DANNS a/k/a KEITH DANNS			DATE PETITION FILED 1/16/76		☒ Voluntary ☐ Involuntary
S.S.#099-46-3952			DATE CLOSED		☐ Fee paid in full ☐ Corporation
ADDRESS OF BANKRUPT/DEBTOR (Number and Street) 168-40 127th Avenue			DISCHARGE ☒ Granted ☐ Denied ☐ Waived		☒ Farmer ☐ Employee ☐ Professional ☐ Other (Non-business) ☐ Merchant ☐ Manufacturer ☐ Other (Business)
CITY JAMAICA			ZONE QUEENS		STATE N.Y.
			DATE DISCHARGED		PETITION DISMISSED? ☐ YES
			NAME OF DISTRICT JUDGE C. ALBERT PARENTE		CHAPTER UNDER WHICH CASE WAS PENDING WHEN DISMISSED

ATTORNEY FOR BANKRUPT OR DEBTOR	NAMES AND ADDRESSES SACHS & SPECTOR 570 7th Ave., New York, NY 10018
ATTORNEY FOR PETITIONING CREDITORS	
RECEIVER	
ATTORNEY FOR RECEIVER	
TRUSTEE	
ATTORNEY FOR TRUSTEE	
CHANGES OF PRINCIPALS	
DATE	PROCEEDINGS
1/16/76	Petition, schedules, statement of affairs & rule 219b statement filed. (1) Referred to: Bankruptcy Judge C. Albert Parente. (Orig. & copy sent to Judge)
8/13/76	Notice of Appeal to District Court from order of Bank. J. Parente dated July 2, 1976 filed. ASSIGNED TO: NEAHER, J. (2)
9/7/76	By Neaher, J. - Memorandum Order filed. Petition for Review scheduled for hearing before Judge Neaher on Oct. 15, 1976, at 2:00 P.M. in Courtroom No. 2. Appellant's brief is to be served and filed by September 20, 1976; Appellee's brief is to be served and filed by Oct. 5, 1976

Docket Entries

- and appellant's brief, if any, is to be served and filed by
October 11, 1976. (3)
- 9/17/76 Plaintiff's Memorandum & accompanying papers filed. (Seymour
R. Weinick, Attyl for Pltff. Household Finance Corp.) (4)
- 9/17/76 (The unreported decisions in Stanzione, Pazzella and Clem
are submitted herewith for the convenience of the Court) (4a)
- 10/1/76 Defendant's Brief filed by Sachs and Spector, P.C., Attorneys
for Defendant Keith Orin Danns. (5)
- 1/17/77 By Neaher, J. - Decision rendered. The Bankruptcy judge's
ruling is affirmed. SO ORDERED. (Copies mailed to Seymour
R. Weinick Esq., and Martin J. Glasser, Esq., Sachs & Spector,
P.C.) (6)
- 2/10/77 Notice of Appeal filed from order of Hon. Edward R. Neaher,
U.S.D.J., dated January 17, 1977, which affirmed order of
Bankruptcy Judge Parente. (copies mailed to Clerk, Court of
Appeals and Bank. J. Parente) *Judge Neaher notified* (7)
- 2/15/77 Bond on Appeal in the sum of \$250.00 filed. (The Travelers
Indemnity Company, Hartford, Connecticut) (8)

Notice of Appeal

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
In re KEITH ORIN DANNS, a/k/a
KEITH O. DANNS, a/k/a KEITH DANNS :

Bankrupt, : 76 B 148
HOUSEHOLD FINANCE CORPORATION,

Plaintiff, : NOTICE OF APPEAL

-against-

:
KEITH ORIN DANNS, a/k/a KEITH
O. DANNS, a/k/a KEITH DANNS, :

Defendant.
-----x

S I R :

PLEASE TAKE NOTICE that HOUSEHOLD FINANCE CORPORATION (Household) hereby appeals to the United States Court of Appeals for the Second Circuit from the order of Hon. Edward R. Neaher, United States District Judge for the Eastern District of New York dated January 17, 1977 which affirmed an order of Bankruptcy Judge C. Albert Parente denying Household's application to bar the bankrupt's discharge for the entire balance of his indebtedness due to Household amounting to \$2189.31 and granting the requested

Notice of Appeal

relief only to the extent of the "fresh money" in the amount of \$483.00, and from each and every part of said order.

Dated: February 10th , 1977.

Yours etc.,

SEYMOUR R. WEINICK
Attorney for Household
Finance Corporation
25 West 34th Street
New York, N.Y. 10001

TO: CLERK, UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SACHS & SPECTOR, P.C.
Attorneys for Bankrupt-Defendant
570 Seventh Avenue
New York, N.Y. 10018

Extracts from Voluntary Petition in Bankruptcy

UNITED STATES DISTRICT COURT FOR THE **Eastern** DISTRICT OF **New York**

In re

KEITH ORIN DANNS
 AKA **KEITH O. DANNS**
 AKA **KEITH DANNS**

Bankrupt

Include here all names used by bankrupt within last 6 years.

BANKRUPTCY NO.

VOLUNTARY PETITION

1. Petitioner's post-office address is **168-40 127th Avenue, Jamaica, New York 11434**
Apt. 7D

2. Petitioner has **resided within this district for the preceding 6 months.**

3. Petitioner is qualified to file this petition and is entitled to the benefits of the Bankruptcy Act as a voluntary bankrupt.

Wherefore petitioner prays for relief as a voluntary bankrupt under the Act.

Signed: **Sachs and Spector**
 by **[Signature]**
☒ Attorney for Petitioner ☐ Petitioner
 (Petitioner signs if not represented by attorney.)

Address: **570 7th Avenue**
New York, New York 10018

VERIFICATION

State of **New York** County of **New York** ss.:

INDIVIDUAL: I, **Keith Orin Danms**, the petitioner named in the foregoing petition, do hereby swear that the statements contained therein are true according to the best of my knowledge, information, and belief.

CORPORATION: I, the²
 do hereby swear that the statements contained therein are true according to the best of my knowledge, information, and belief, and that the filing of this petition on behalf of the corporation has been authorized.

PARTNERSHIP: I, a member
 —an authorized agent— of the partnership named as petitioner in the foregoing petition, do hereby swear that the statements contained therein are true according to the best of my knowledge, information, and belief, and that the filing of this petition on behalf of the partnership has been authorized.

Subscribed and sworn to before me on
January 15, 1976.

MARTIN J. GLASSER
 Notary Public, State of New York
 No. 30-1450500
 Qualified in Nassau County
 Commission Expires March 30, 1977

Notary Public

Official Character

Extracts from Voluntary Petition in Bankruptcy

Schedule A-2 — Creditors Holding Security

Name of creditor and residence or place of business (if unknown, so state)	Description of security and date when obtained by creditor	Specify when claim was incurred and the consideration therefor; when claim is contingent, unliquidated, disputed, subject to setoff, evidenced by a judgment, negotiable instrument or other writing, or incurred as partner or joint contractor, so indicate; specify name of any partner or joint contractor on any debt	Market value	Amount of claim with- out deduction of value of security
Chemical Bank 770 Broadway New York City, New York 10003	Money, securities, April 22, 1974; other property, deposit accounts in possession of Chemical Bank, claims against Chemical Bank.	loan; evidenced by writing; statement of loan, statement of disclosure; Summons.	\$ 0 00	\$ 2,707 23
First National City Bank 810 Seventh Avenue New York, New York 10019	Money, securities, June 1974; loan; other property, in possession of First National City Bank, claims against First National City Bank, 10% of wages.	evidenced by writ- ing; Note and Assignment of Wages	0 00	1,424 69
continued on supplement				
From supplement			3,300 00	5,425 38
Total			3,300 00	9 561 30

Schedule A-3 — Creditors Having Unsecured Claims Without Priority

Name of creditor (including last known holder of any negotiable instrument) and residence or place of business (if unknown, so state)	Specify when claim was incurred and the consideration therefor; when claim is contingent, unliquidated, disputed, subject to setoff, evidenced by a judgment, negotiable instrument, or other writing, or incurred as partner or joint contractor, so indicate; specify name of any partner or joint contractor on any debt	Amount of claim
R.H.MACY & Co., Inc. Herald Square New York, New York	July 12, 1974 and July 13, 1974; Furniture electrical appliances, records and tapes, shoes; evidenced by writing: summons and complaint, and credit card receipts, Notice of Default and Proposed Judgment	\$ 1,067.84
Pan American World Airways, Inc. P.O. Box 5514 Grand Central Post Off- ice New York, New York 10017	March 11, 1974 and September 18, 1974; Airline tickets; evidenced by writing: statement of account, credit card receipts and lawyer's claim letter.	1,094 63
A.T. Grant & Co. P.O. Box 2006 Glastonbury, Ct. 06033	June and July, 1974; Dry goods, lamps, etc.; Evidenced by writing: past due notice, and credit card receipts. Joint contractor: Cicely Danna.	933 00
Anesthesia Group, P.C. 374 Stockholm Street Brooklyn, New York 11237	January 17, 1975 and September 29, 1975; anesthesiology; evidenced by writing: statement of account.	210 00
Total		3,305 47

Extracts from Voluntary Petition in Bankruptcy

Schedule A-3 — Creditors Having Unsecured Claims Without Priority

Name of creditor (including last known holder of any negotiable instrument) and residence or place of business (if unknown, so state)	Specify when claim was incurred and the consideration therefor when claim is contingent, unliquidated, disputed, subject to setoff, evidenced by a judgment, negotiable instrument or other writing, or incurred as partner or joint contractor, so indicate; specify name of any partner or joint contractor on any debt	Amount of claim	
Gertz 162-10 Jamaica Avenue Jamaica, New York 11431	Continuing transactions on credit card; miscellaneous goods; evidenced by writing; lawyer's claim letter.	\$ 137	85
Chemical Bank P.O. Box 686 Cooper Station New York, New York 10003	Revolving credit account; overdraft loans; revolving credit account statement.	400	00
Beneficial Finance Co., of New York, Inc. 38-15 Main Street Flushing, New York 11354	June 5, 1974; Loan; Evidenced by writings; statement of disclosure; joint contractor: Cicely Danms.	1,287	92
Household Finance Corporation Room 302-Stuart Building 163-18 Jamaica Avenue Jamaica, New York 11432	January 24, 1975; Loan; Evidenced by writings; note; joint contractor: Cicely Danms.	2,622	01
Brought Forward		3,305	47
		Total	7,153 25

*Extracts from Voluntary Petition in Bankruptcy***Supplement to Schedule A-2**

Gerts Long Island 162-10 Jamaica Avenue Jamaica, New York 11432	June 24, 1974; Bar & 2 stools, Carpeting, bedroom sets (2), sofa, love seat, chair, coffee table, dinette set, mattress, box springs, room divider.	June 22, 1974; furniture and carpeting; evidenced by writings; retail installment contract, lawyer's claim letter.		
			1,500.00	3,028.08
Ford Motor Credit Company 110 South Central Avenue Hartsdale, N.Y. 10530	June 5, 1974; Mercury automo- bile Joint contractor:	June 5, 1975; Mercury automobile; evidenced by writings; retail installment contract, payment book. Cicely Danks.		
			1,800.00	2,401.30

Extracts from Voluntary Petition in Bankruptcy

SCHEDULE B — STATEMENT OF ALL PROPERTY OF BANKRUPT

Schedules B-1, B-2, B-3, and B-4 must include all property of the bankrupt as of the date of the filing of the petition by or against him.

Schedule B-1 — Real Property

Description and location of all real property in which bankrupt has an interest (including equitable and future interests, interests in estates by the entirety, community property, life estates, leaseholds, and rights and powers exercisable for his own benefit)	Nature of interest (specify all deeds and written instruments relating thereto)	Market value of bankrupt's interest without deduction for secured claims listed in schedule A-2 or exemptions claimed in schedule B-4	
NONE		\$	
Total			

Schedule B-2 — Personal Property

Type of Property	Description and location	Market value of bankrupt's interest without deduction for secured claims listed on schedule A-2 or exemptions claimed in schedule B-4	
a. Cash on hand	None	\$ 0	00
b. Deposits of money with banking institutions, savings and loan associations, credit unions, public utility companies, landlords, and others	None	0	00
c. Household goods, supplies, and furnishings	Four rooms of furniture, appliances, carpeting, drapery, T.V., record player, typewriter, suitcases, radio, fan, lamps, eating utensils, dishes, pots and pans.	2,000	00
d. Books, pictures, and other art objects; stamp, coin, and other collections	none	0	00
e. Wearing apparel, jewelry, firearms, sports equipment, and other personal possessions	Watch, wedding ring, and clothing	150.	00
f. Automobiles, trucks, trailers, and other vehicles	1974 Mercury	1,800	00
g. Boats, motors, and their accessories	none	0	00
Total			

Extracts from Voluntary Petition in Bankruptcy

Schedule B-2 — Personal Property (Continued)

Type of property	Description and location	Market value of bankrupt's interest without deduction for secured claims listed on schedule A-2 or exemptions claimed in schedule B-4	
h. Livestock, poultry, and other animals	none	\$	0 00
i. Farming supplies and implements	none		0 00
j. Office equipment, furnishings, and supplies	none		0 00
k. Machinery, fixtures, equipment, and supplies (other than those listed in items j and l) used in business	none		0 00
l. Inventory	none		0 00
m. Tangible personal property of any other description	none		0 00
n. Patents, copyrights, franchises, and other general intangibles (specify all documents and writings relating thereto)	none		0 00
o. Government and corporate bonds and other negotiable and nonnegotiable instruments	none		0 00
p. Other liquidated debts owing bankrupt or debtor	none		0 00
q. Contingent and unliquidated claims of every nature, including counterclaims of the bankrupt or debtor (give estimated value of each)	none		0 00
r. Interests in insurance policies (itemize surrender or refund values of each)	Group insurance policy through employment with no cash surrender value.		0 00
s. Annuities	none		0 00
t. Stocks and interests in incorporated and unincorporated companies (itemize separately)	Rochdale Village, Inc. (Cooperative Apt.) Jointly owned with wife, Cicely Danna.	2,500 00 (total value of Coop jointly owned with Cicely Danna)	0 00
u. Interests in partnerships	none		0 00
v. Equitable and future interests, life estates, and rights or powers exercisable for the benefit of the bankrupt or debtor (specify all written instruments relating thereto)	none		0 00
Total			6,450 00

Extracts from Voluntary Petition in Bankruptcy

UNITED STATES DISTRICT COURT FOR THE Eastern

DISTRICT OF New York

In re

KEITH ORIN DANNS, KEITH O. DANNS,
KEITH DANNS

Bankrupt

BANKRUPTCY NO.

STATEMENT OF AFFAIRS
FOR BANKRUPT
NOT ENGAGED IN BUSINESS

Include here all names used by bankrupt within last 6 years.

Each question should be answered or the failure to answer explained. If the answer is "none," this should be stated. If additional space is needed for the answer to any question, a separate sheet, properly identified, and made a part hereof, should be used and attached.

The term "original petition," as used in the following questions, shall mean the petition filed under Bankruptcy Rule 101, 104 or 106.

1. Name and residence.

- What is your full name and social security number?
- Have you used, or been known by, any other names within the 6 years immediately preceding the filing of the original petition herein?
(If so, give particulars.)
- Where do you now reside?
- Where else have you resided during the 6 years immediately preceding the filing of the original petition herein?

Keith Orin Dannes, 099-46-3952

2. Occupation and income.

- What is your occupation?
- Where are you now employed?
(Give the name and address of your employer, or the address at which you carry on your trade or profession, and the length of time you have been so employed.)
- Have you been in a partnership with anyone, or engaged in any business during the 6 years immediately preceding the filing of the original petition herein?
(If so, give particulars, including names, dates, and places.)
- What amount of income have you received from your trade or profession during each of the 2 calendar years immediately preceding the filing of the original petition herein?
- What amount of income have you received from other sources during each of these 2 years?
(Give particulars, including each source, and the amount received therefrom.)

Yes. Keith O. Dannes, Keith Dannes
168-40 127th Avenue, Jamaica, New York
119-16 Smith Street, Jamaica, New York
115-66 191st Street, Jamaica, New York
Business Office Representative
New York Telephone Co.,
88-11 165th Street, Jamaica, New York
Since 1970, December

No

Approximately \$14,000 per year

None

3. Tax returns and refunds.

- Where did you file your last federal and state income tax returns for the 2 years immediately preceding the filing of the original petition herein?
- What tax refunds (income and other) have you received during the year immediately preceding the filing of the original petition herein?
- To what tax refunds (income or other), if any, are you, or may you be, entitled?
(Give particulars, including information as to any refund payable jointly to you and your spouse or any other person.)

New York

\$930.00, Federal, State, and City

Unknown

4. Bank accounts and safe deposit boxes.

- What bank accounts have you maintained alone or together with any other person, and in your own or any other name within the 2 years immediately preceding the filing of the original petition herein?
(Give the name and address of each bank, the name in which the deposit was maintained, and the name and address of every other person authorized to make withdrawals from such account.)
- What safe deposit box or boxes or other depository or depositories have you kept or used for your securities, cash, or other valuables within the 2 years immediately preceding the filing of the original petition herein?
(Give the name and address of the bank or other depository, the name in which each box or other depository was kept, the name and address of every other person who had the right of access thereto, a brief description of the contents thereof, and, if the box has been surrendered, state when surrendered, or, if transferred, when transferred, and the name and address of the transferee.)

Marine Midland Bank, 163rd St., & Jamaica Ave.,
Jamaica, New York
Chemical Bank, 38-13 Broadway, L.I.C., N.Y. 11103
European American Bank, 179-55 Hillside Avenue
Jamaica, New York
Marine & European were with wife, Cicely Dannes,
168-40 127th Avenue, Jamaica, New York 11434
Chemical Bank, 38-13 Broadway, L.I.C., N.Y. 11103
with Cicely Dannes

School certificates, birth & baptismal certificates, cancelled bank book, income tax papers, immigration papers, references, employment paper selective service papers, cancelled airline tickets.

No

5. Books and records.

- Have you kept books of account or records relating to your affairs within the 2 years immediately preceding the filing of the original petition herein?
- In whose possession are these books or records?
(Give names and addresses.)
- If any of these books or records are not available, explain.
- Have any books of account or records relating to your affairs been destroyed, lost or otherwise disposed of within the 2 years immediately preceding the filing of the original petition herein?
(If so, give particulars, including date of destruction, loss, or disposition, and reason therefor.)

6. Property held for another person.

- What property do you hold for any other person?
(Give name and address of each person, and describe the property, or value thereof, and all writings relating thereto.)

No

7. Prior bankruptcy.

- What proceedings under the Bankruptcy Act have previously been brought by or against you?
(State the location of the bankruptcy court, the nature and number of each proceeding, the date when it was filed, and whether a discharge was granted or refused, the proceeding was dismissed, or a composition, arrangement, or plan was confirmed.)

No

Extracts from Voluntary Petition in Bankruptcy

8. Receiverships, general assignments, and other modes of liquidation.

a. Was any of your property, at the time of the filing of the original petition herein, in the hands of a receiver, trustee, or other liquidating agent?

No

(If so, give a brief description of the property, the name and address of the receiver, trustee, or other agent, and, if the agent was appointed in a court proceeding, the name and location of the court and the nature of the proceeding.)

b. Have you made any assignment of your property for the benefit of your creditors, or any general settlement with your creditors, within one year immediately preceding the filing of the original petition herein?

No

(If so, give dates, the name and address of the assignee, and a brief statement of the terms of assignment or settlement.)

9. Property in hands of third person.

Is any other person holding anything of value in which you have an interest?

No

(Give name and address, location and description of the property, and circumstances of the holding.)

10. Suits, executions, and attachments.

a. Were you a party to any suit pending at the time of the filing of the original petition herein?

Civil Court, Queens, R.H. Barry & Co., Inc. v. Keith O. Dams, sec. 413, PPI, and for necessities.

(If so, give the name and location of the court and the title and nature of the proceeding.)

b. Were you a party to any suit terminated within the year immediately preceding the filing of the original petition herein?

No

(If so, give the name and location of the court, the title and nature of the proceeding, and the result.)

c. Has any of your property been attached, garnished, or seized under any legal or equitable process within the 4 months immediately preceding the filing of the original petition herein?

No

(If so, describe the property seized or person garnished, and at whose suit.)

11. Loans repaid.

What repayments on loans in whole or in part have you made during the year immediately preceding the filing of the original petition herein?

see attached sheet

(Give the name and address of the lender, the amount of the loan and when received, the amounts and dates of payments and, if the lender is a relative, the relationship.)

12. Transfers of property.

a. Have you made any gifts, other than ordinary and usual presents to family members and charitable donations, during the year immediately preceding the filing of the original petition herein?

No

(If so, give names and addresses of donees and dates, description, and value of gifts.)

b. Have you made any other transfer, absolute or for the purpose of security, or any other disposition, of real or tangible personal property during the year immediately and preceding the filing of the original petition herein?

No

(Give a description of the property, the date of the transfer or disposition, to whom transferred or how disposed of, and, if the transferee is a relative, the relationship, the consideration, if any, received therefor, and the disposition of such consideration.)

13. Repossessions and returns.

Has any property been returned to, or repossessed by, the seller or by a secured party during the year immediately preceding the filing of the original petition herein?

No

(If so, give particulars including the name and address of the party setting the property and its description and value.)

14. Losses.

a. Have you suffered any losses from fire, theft, or gambling during the year immediately preceding or since the filing of the original petition herein?

No

(If so, give particulars, including dates, names, and places, and the amounts of money or value and general description of property lost.)

b. Was the loss covered in whole or part by insurance?

(If so, give particulars.)

15. Payments or transfers to attorneys.

a. Have you consulted an attorney during the year immediately preceding or since the filing of the original petition herein?

Yes. Sachs and Spector, P.C.,

(Give date, name, and address.)

b. Have you during the year immediately preceding or since the filing of the original petition herein paid any money or transferred any property to the attorney or to any other person on his behalf?

570 Seventh Avenue, New York, N. Y.
October 31, 1975: \$50.00; Nov. 25, 1975: \$100.00;
Dec. 17, 1975: \$100.00; Jan. 15, 1976: \$250.00.

(If so, give particulars, including amount paid or value of property transferred and date of payment or transfer.)

c. Have you, either during the year immediately preceding or since the filing of the original petition herein, agreed to pay any money or transfer any property to an attorney at law, or to any other person on his behalf?

No

(If so, give particulars, including amount and terms of obligation.)

State of **New York**, County of **New York**

I, **Keith Orin Dams**

in the foregoing statement of affairs and that they are true and complete to the best of my knowledge, information, and belief.

Subscribed and sworn to before me on

January, 15

1976

MARTIN J. GLASSER
NOTARY PUBLIC
No. 30-1450500
Qualified in Nassau County
Commission Expires March 30, 1977

Notary Public

Official character

do hereby swear that I have read the answers contained

A-13
Complaint

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
IN RE

Keith Orin Danna aka Keith O.
Danna aka Keith Danna

Bankrupt

Bankruptcy No.
76 B 148

HOUSEHOLD FINANCE CORPORATION
Plaintiff

C O M P L A I N T

vs.

Keith Orin Danna aka Keith O. Danna
aka Keith Danna

Defendant
-----X

1. That the Court has jurisdiction of this action by virtue of Section 17 of the Bankruptcy Act (11 U.S.C.A. 35).

2. That plaintiff is a creditor of the above named defendant and has been included in the schedules of obligations filed by the defendant.

3. On the 24 day of January, 1975, the defendant obtained from the plaintiff a loan of money or an extension of credit, wherein the defendant promised to repay the sum of \$ 3,261.96. The loan was evidenced by a promissory note, executed and delivered by the defendant on the same date.

4. That prior to and as a condition precedent to the granting of the loan the defendant made and submitted to the plaintiff, a statement in writing, respecting his financial condition.

5. That the statement was materially false and was made, executed and delivered by the defendant for the purpose of obtaining money or an extension of credit from the plaintiff; that the statement was intentionally false and was relied upon by

A-14
Complaint

the plaintiff as a basis for entering into the said loan transaction.

6. That the said statement failed to disclose in excess of \$ 7,000.00 of said defendant's then existing debts.

7. That if the true facts had been stated, the plaintiff would not have entered into the loan transaction.

8. That the defendant, having obtained credit or an extension or renewal of credit, upon a materially false statement in writing in respect to his financial condition, is not entitled to have that obligation discharged in bankruptcy.

9. Defendant has failed to make the payment required by said note and there is now due and owing to plaintiff from defendant the sum of \$ 2,189.31 with interest thereon from January 24, 1976.

WHEREFORE, plaintiff demands Judgment in the sum of \$ 2,189.31 together with interest, costs and disbursements.

Dated: New York, New York
March 1, 1976

SEYMOUR R. WEINICK

SEYMOUR R. WEINICK, Esq.
25 West 34 Street
New York, New York 10001
(212) 244-1412

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
In re

Keith Orin Danns aka Keith O. Danns
aka Keith Danns

Bankrupt
HOUSEHOLD FINANCE CORPORATION
Plaintiff

Bankruptcy No.
76 B 148

A N S W E R

vs.

Keith Orin Danns aka Keith O. Danns
aka Keith Danns

Defendant
-----X

To the Honorable C. Albert Parente,
Bankruptcy Judge:

KEITH ORIN DANNS, the above named defendant, answers the
Complaint of HOUSEHOLD FINANCE CORPORATION, dated the 1st day of
March, 1976, as follows:

1. Admits the allegations contained in paragraphs numbered
1,2, and 3 of said Complaint.

2. Denies each and every allegation contained in paragraphs
numbered 4,5,6,7,8 and 9 of said Complaint.

WHEREFORE, KEITH ORIN DANNS respectfully prays that the relief
sought by plaintiff be denied in all respects.

Dated: New York, New York
March 25, 1976

SACHS AND SPECTOR, P.C.
570 7th Avenue
New York, New York 10018
(212) 221-1632

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Transcript of Trial Before Judge Parente

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
IN BANKRUPTCY

-----x

IN THE MATTER :

OF :

KEITH ORIN DANNS, a/k/a :

KEITH O. DANNS, a/k/a No. 76-B-148

KEITH DANNS, :

Bankrupt. :

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Westbury, Long Island, New York,
April 29, 1976,
At 11:00 o'clock a.m.

BEFORE:

HON. C. ALBERT PARENTE,
Bankruptcy Judge.

- - - -

TRIAL ON COMPLAINT OF HOUSE-
HOLD FINANCE CORP. AGAINST
THE BANKRUPT OR DISCHARGE-
ABILITY OF DEBT

PROCEEDING PURSUANT TO NOTICE

- - - -

Transcript of Trial Before Judge Parente

APPEARANCES:

SACHS & SPECTOR, ESQs.,
Attorneys for the Bankrupt,
570 Seventh Avenue
New York, New York
By: MARTIN J. GLASSER, ESQ., of Counsel.

MR. KETTER ORIN DANNIS,
The Bankrupt-Defendant.
In person,
108-40 127th Avenue
Jamaica, Long Island, New York.

SEYMOUR R. WEINICK, ESQ.,
Attorney for Household Finance Corp.,
Plaintiff,
25 West 34th Street
New York, New York.

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THE COURT: If you are ready gentlemen,
you may proceed.

MR. WEINICK: I now call Mr. Dannis to
the stand, if Your Honor please.

THE COURT: Is this an extension of a pre-
existing loan?

MR. WEINICK: Yes, Your Honor; it is.

THE COURT: What is the amount of new
money involved? How much did he receive in
fresh capital?

MR. WEINICK: It was \$500.00, Your Honor.

THE COURT: Mr. Dannis, how much did they

Transcript of Trial Before Judge Parente

give you in fresh money when you went down to extend your loan?

THE BANKRUPT: I think about \$1,100.00.

THE COURT: You actually received fresh cash of \$1,100.00?

THE BANKRUPT: Yes, sir.

MR. WEINICK: Your Honor, it would be a mis-statement if he said it is \$1,100.00. My client indicates that it is close to \$500.00.

THE COURT: Are you working, Mr. Danns?

THE BANKRUPT: Yes, I am.

THE COURT: How much do you earn?

THE BANKRUPT: \$250.00 a week.

THE COURT: And you cannot pay \$20.00 or \$30.00 a month until you pay off that \$500.00?

MR. WEINICK: Your Honor, I cannot settle for \$500.00.

THE COURT: Well, that is all I can give you.

MR. WEINICK: I understand that, if Your Honor please, and we are prepared to take this issue up.

THE COURT: Then, do you want a test case?

Transcript of Trial Before Judge Parente

MR. WEINICK: Yes, Your Honor; we do.

THE COURT: All right; then, proceed, please.

MR. WEINICK: I now call Mr. Danns to the stand.

KEITH ORIN DANN S, the Bankrupt-
Defendant herein, residing at 108-40 127th
Avenue, Jamaica, Long Island, New York,
called as a witness in behalf of the Plain-
tiff, being first duly sworn by the Bank-
ruptcy Judge, testified as follows:

(Then followed discussion.)

THE COURT: Then, this matter is marked
ready, and I will put it over until two
o'clock this afternoon.

(Whereupon the trial was then adjourned
until two o'clock p.m.)

Keith Orin Danns—Direct

AFTERNOON SESSION

(Trial resumed after luncheon recess at
2:30 o'clock p.m.)

MR. WEINICK: I call Mr. Danns to the
witness stand, please.

K E I T H O R I N D A N N S, the Bankrupt-
Defendant herein, called as a witness in be-
half of the Plaintiff, having been previously
duly sworn by the Bankruptcy Judge, testified
as follows:

DIRECT EXAMINATION

BY MR. WEINICK:

Q Mr. Danns, on or about January 24, 1975
did you borrow money from the Household Finance
Corporation?

A Yes, I did.

Q I show you this paper bearing that date,
and ask you whether this is the note that you
signed at that time (handing paper to the witness)?

A Yes, it is.

MR. WEINICK: I offer this note into
evidence, if Your Honor please. Do you want
to look at it, Counselor (handing paper to
Mr. Glasser)?

Keith Orin Danns—Direct

K.O. Danns - direct

MR. GLASSER: Yes, I do.

(Pause.)

MR. GLASSER: No objection, Your Honor.

THE COURT: Mark it in evidence.

MR. WEINICK: This note is in the amount of \$3,261.96.

(Note dated January 24, 1975 in the amount of \$,261.96, signed by Keith Orin Danns, referred to above, received in evidence and marked Plaintiff's Exhibit 1, 4-29-76, J.J.Y.)

BY MR. WEINICK:

Q Mr. Danns, I show you this paper bearing the date of January 24, 1975 entitled "Financial Statement," and ask you whether or not you signed it (handing paper to the witness)?

A Yes, I did.

Q And was this financial statement given to Household Finance Corporation in connection with this loan?

A Yes, it was.

Q And with the exception of the printed matter and the witness's signature, is this paper

Keith Orin Danms—Direct

K.O. Danms - direct

in your handwriting?

A. Yes, it is.

Q. And you wrote the words on it of "I have no other debts"?

A. That is right.

MR. WEINICK: I offer it into evidence, if Your Honor pleases.

THE COURT: Why did you write the words "I have no other debts" on there?

THE WITNESS: Because I was told to write that on the paper by the man who was there.

Q. This man that you are referring to, is he present in Court today?

A. I can't be sure. I recognize his face as one of the persons who was there, but I can't be sure that he was the exact person who told me that. I go there very often.

Q. And did they ask you whether you had any debts on that date?

A. No, they didn't ask me about that.

Q. Well, how come that you filled out this statement, then?

Keith Orin Danns—Direct

K. O. Danns - direct

A. I had the loan transaction, and it was just about completed. I was on my way out then.

Q. You haven't answered by question, Mr. Danns, as to how come you filled out this statement if nobody asked you whether you had any debts or not?

A. Oh, he told me to write it on there.

Q. Did he ask you about any debts?

A. No, not really.

Q. He didn't ask you whether you owed any money to anybody?

A. He asked me to fill in the form.

Q. And you then filled in the form?

A. Yes, I then filled in the form; and-then he just said, "Just put down, "I have no other debts," and I did.

Q. Did you have any other debts at that time, Mr. Danns?

A. As a matter of fact, I did.

Q. Will you tell me the names of these other creditors that you had at that time, and the amounts that you owed them?

A. I can't tell you that exactly offhand, but I

Keith Orin Danns—Direct

K. O. Danns - direct

can make an attempt.

Q All right; then, go ahead.

A I owed Gertz money at that time.

Q Obviously, because you told us about Gertz at that time.

A Yes, and I owed Beneficial Finance at that time.

Q And about how much did you owe Beneficial Finance at that time?

A Not very much, I think about maybe \$1,000.00 or so.

Q About \$1,000.00?

A Yes, about \$1,000.00.

THE COURT: Did this man at Household Finance know about your Beneficial Finance obligation?

THE WITNESS: He didn't ask me that.

THE COURT: But did he know about that?

THE WITNESS: I don't think he did, sir.

Q Mr. Danns, did you have any other debts at that time?

A Yes, I did.

Q Will you tell me what other debts you had

Keith Orin Danns—Direct

K. O. Danns - direct

at that time?

A. I had Macy's at that time, also.

Q. And how much did you owe Macy's at that time?

A. That I can't remember offhand.

Q. About, give us your approximation of it, then?

A. My approximation of it could be bad. I don't recall exactly how much it was.

THE COURT: You have it in his schedules. Tell him that, Counselor.

Q. Your schedules in bankruptcy show that you purchased items from Macy's from July 12, 1974 to July 13, 1974, and that you owed them \$1,067.84. Does this refresh your recollection, Mr. Danns?

A. At the time I purchased it, yes. Now, I did purchase that \$1,000.00 at that time, but I can't recall if that was the amount owing to them or not.

Q. But this was the amount that you owed Macy's after Household furniture; is that correct?

A. I am not sure of that.

Keith Orin Danns—Direct

K. O. Danns --direct

Q Well, you have listed them in your bankruptcy schedules, have you not?

A I would have to see the schedules for that.

Q Then, I will show you your schedules in bankruptcy, Mr. Danns (handing papers to the witness.)

Q I show you a copy of your Schedule A-3, and I call your attention to the R.H. Macy debt listed thereon, which is the first debt listed there.

A Yes, sir.

Q Now, you filled out that schedules subsequent to the Household Finance loan; is that correct?

A That is correct.

Q And you owed them at least \$1,000.00 or more as set forth there after the Household Finance loan; is that correct?

A Yes, that is right.

Q And you also owed them at least that amount of money on the date when the Household Finance loan was taken out by you; is that correct?

A Yes, that is correct.

Keith Orin Danns—Direct

K. O. Danns - direct

Q Did you owe anybody else any money at that time, Mr. Danns?

A Yes. I owed the First National City Bank money at that time.

Q About how much did you owe the First National City Bank at that time?

A I owed them about, I think about \$3,000.00 at that time.

THE COURT: About \$3,000.00?

THE WITNESS: Yes, I think so.

Q And did you also owe the Ford Motor Credit money at that time?

A Yes. I bought a car from them.

Q And was the amount owed them approximately at that time \$3,100.00?

A I think so.

Q And did you also owe the Chemical Bank money at that time?

A That is correct.

Q And the amount that you owed them at that time was also approximately \$3,100.00; is that correct?

A I would say, yes.

Keith Orin Danns—Direct

K. O. Danns - direct

MR. WEINICK: If Your Honor please, I now offer the financial statement into evidence. I do not believe it was previously marked in evidence, and I respectfully request that it be marked in evidence at this time.

THE COURT: Do you have any objection to it, Counselor?

MR. GLASSER: May I see it, please?

MR. WEINICK: Yes, surely (handing papers to Mr. Glasser.)

MR. GLASSER: No objection, if Your Honor please.

THE COURT: Then, have it marked in evidence.

(Document entitled "Financial Statement," dated January 24, 1975, signed by Keith Orin Danns, referred to above, received in evidence and marked Plaintiff's Exhibit 2, 4-29-76, J.J.Y.)

BY MR. WEINICK:

Q Mr. Danns, you knew about all of these other loans that you had outstanding at that time or debts that you had outstanding at that time.

K. O. Danns -- direct

Will you tell the Court why they weren't listed on the form of your financial application for a loan?

A. Yes, sir. I called Household Finance for a loan. I knew I had other bills and other debts at that time. I called them by phone. The gentleman from Household Finance then got off the phone for a few minutes. He came back and he said "It looks good for the renewal of your loan, so come in."

THE COURT: Did you tell him that you had these other loans?

THE WITNESS: He didn't ask me that, sir.

Q Mr. Danns, when you called for this loan did the man from Household Finance ask you any questions relative to your employment?

A. No, he did not.

Q He did not ask you any questions whatsoever at that time, then?

A. No, sir. I remember him saying to me ---- I asked him if I could renew the loan, and he asked me how much I had in mind, and I asked him how much I could get if I remember correctly because I did need the money at that time.

Keith Orin Danns—Direct

K. O. Danns - direct

Then he got off the line, and he came back on to the line a couple of minutes later on, and he told me, "It looks good; come on in;" and that's what I did.

So, I went in.

Q At this time or at the time of this Household Finance loan did you also owe W.T. Grant & Company any money?

A Yes, sir; I did.

Q And how much did you owe W.T. Grant & Company at that time?

A The figures are down there, but I don't remember the figures too well (indicating.)

Q I will tell you that your bankruptcy schedules indicate that you owe them \$933.00. Is that an approximate correct figure of what you owed them on the date of this Household Finance loan?

A If that's what it says there, then that's what it is.

MR. WEINICK: I have no other questions of this witness, if Your Honor pleases.

Keith Orin Danms—Cross

K. O. Danms

MR. GLASSER: For now all I want to do is to establish one thing ----

MR. WEINICK: (Interposing) Judge, I object to this.

THE COURT: Strike it out. You may cross examine, Counselor.

CROSS EXAMINATION

BY MR. GLASSER:

Q Mr. Danms, you testified as to what was asked of you by the manager or by whoever you spoke to at Household Finance.

A Yes, sir.

Q Now, could you repeat again what happened with regard to the financial statement?

THE COURT: What are you talking about now, the telephone call or what?

MR. GLASSER: Let me rephrase the question, if Your Honor please.

THE COURT: Please do.

Q The man that you spoke to at the Household Finance Corporation, he asked you to fill out the financial statement, did he not?

MR. WEINICK: I object to that question,

K. O. Danns - cross

Your Honor please.

MR. GLASSER: I can lead the witness, you know.

THE COURT: Objection sustained. You have not even fixed the time, Counselor. I do not know whether you are talking about at the time of the telephone call or the time that he went there subsequent to the telephone call and met with their representative.

If you will clarify the time, you have a certain amount of leading.

Q Mr. Danns, on January 24, 1975, on the date when you actually got the loan from Household Finance, please tell me what the employee of Household Finance Company who gave you this loan said to you with regard to your previous loans or financial statements?

MR. WEINICK: I object to that, if Your Honor please. He is testifying again, and he has not asked him any question. Therefore, I object to the form of the question.

MR. GLASSER: I am asking him the question now.

K. O. Danns - cross

THE COURT: Objection sustained as to form. It is not a proper question as to form.

Q Mr. Danns, did you have any conversation on January 24, 1975 with the individual who was the employee of the Household Finance Corporation who was discussing your loan with you?

A On January 24, 1975?

Q Yes, on the date when you got the loan from Household Finance, at that time did he give you a paper or a statement asking you to list your debts?

A At the time I had the conversation with him, do you mean?

Q Yes, at the time you had the conversation with him?

A (NO response.)

Q Mr. Danns, I show you Plaintiff's Exhibit 2 (handing paper to the witness.) Did you have any conversation with the employee of the Household Finance Corporation who asked you to fill this out at the time he gave this to you?

A Yes, I did.

Keith Orin Danns—Cross

K. O. Danns - cross

Q And what was the nature of that conversation, Mr. Danns?

A The employee of Household Finance called me back on my way to the door, and he said to me, "There is one more form that I want you to fill out," and I filled it out. I read it.

He said ---- he didn't say to me that this is a financial statement. I put down Gertz on that paper, and then I was actually on my way out with my wife at the time, and then he called me back.

Q Did he call you back after you filled out that form or before you filled out that form?

A He called me back, and then gave me the form. This form wasn't brought to my attention before I left.

Q Then, you had the form?

A Yes, I did.

Q And then you put Gertz down there?

A That is correct.

Q And what happened then, Mr. Danns?

A I put Gertz down, and then I was getting ready to write in the rest of them, and he said, "Just

K. O. Danns - cross

put down there 'I have no other debts' in my own handwriting."

Q But you were prepared to complete the form and put down more debts?

MR. WEINICK: Objection, Your Honor.

THE COURT: Why don't you ask him, "Were you prepared to complete the form and put down more debts"?

Q Mr. Danns, were you prepared to complete the form and put down more debts?

A Yes, I was.

Q Then, you were prepared to complete the form and put down more debts?

A Yes, I was.

Q Did he tell you that it was not necessary or words to that effect, and dictate to you the words that you should put under the Gertz debt?

MR. WEINICK: Objection, Your Honor. He is testifying, and he is not asking him any question.

THE COURT: I will allow it. Objection overruled.

Keith Orin Danns—Cross

K. O. Danns - cross

A. Yes, he did tell me to put down these words.

BY THE COURT:

Q. Mr. Danns, let's see if we can set this record straight. How many debts had you listed before the representative of the loan company came over to you?

A. He was there already. He was standing there.

Q. And when he handed this form to you, did he tell you to list all of your debts?

A. Yes, sir.

Q. And does the form say that?

A. Yes, sir; it does.

Q. Did you read the form?

A. Not really, sir, because I already had the check.

Q. Had you been in this situation before where you borrowed money and you had to list your debts?

A. Yes, sir; I was.

Q. And it reached a point where you put down one debt; is that correct?

A. That's correct.

Q. And at that point he said to you, "Put

K. O. Danms - cross

down 'I have no other debts'?"

A. That is correct.

Q In your own handwriting?

A. That is correct.

Q Did you tell him that you had other debts?

A. Well, no, sir. He didn't ask me that. I was putting my debts down ----

Q (Interposing) Well, did you feel that you had a duty to tell him that you had other debts?

A. Well, yes, as a matter of fact I did feel that I had a duty to tell him that I had other debts.

Q And did you meet that duty by telling him that?

A. I also felt at the time that time was of the essence because this was on the lunch hour.

Q So that you knew that you had other debts at that time?

A. Yes, sir.

Q Was there any doubt in your mind as to whether the loan would be granted had you listed

K. O. Danns - cross

all of your debts?

A. No, sir.

Q. Why do you say that?

A. I say that because I have dealt with them before, and my record with them was pretty good. As a matter of fact, I didn't fill out any such form--

Q. (Interposing) He said it was okay to come down and fill out the application; is that correct?

A. My question to him was, "How much can I get," and he told me how much I can get at the time. Then, when he came back on the phone after he got off the phone he told me how much I might be able to get, and he said, "It looks okay; come on down."

I had prior transactions with them.

Q. How many times had you dealt with them in the past?

A. At least once.

Q. And this was your second go-round with them, then?

A. It could be the third time I renewed the loan with them.

Q. Did you deal with the same individual

Keith Orin Danns—Cross

K. O. DANNS - CROSS

everytime you went to this office?

A. No, sir. I dealt with different individuals, at least with two different individuals, but I know their faces not their names, and I believe they know mine.

Q. When did you file your petition in bankruptcy?

A. I filed my petition in bankruptcy in January of 1976.

THE COURT: All right, Counselor; you may proceed.

BY MR. GLASSER:

Q. Mr. Danns, at the time you executed the financial statement did you have the check already in your hand?

A. Yes, sir; I did.

THE COURT: What check are you referring to?

Q. Did you have the check which was the proceeds of the loan that Household Finance made to you at that time?

A. Yes, I did.

THE COURT: You had the proceeds of the

Keith Orin Danns—Cross

K. O. DANNS - cross

loan before you completed the financial statement?

THE WITNESS: Yes, exactly, sir.

Q Did you tell the Household Finance man anything at all about previous loans that you had with other people or outstanding debts that you had at that time, Mr. Danns?

MR. WEINICK: Judge, the witness has already testified that he did not tell him anything like that.

THE COURT: I will allow him to answer the question. Objection overruled.

A Will you repeat the question, please?

Q Yes. Did you suggest to or tell the man from the Household Finance Company in any way, shape, manner or form that you did have outstanding debts other than the Gertz debt, Mr. Danns?

MR. WEINICK: I object to the form of the question, if Your Honor please.

THE COURT: Yes. The form of the question is objectionable. Just ask the question directly without putting in some adjectives, Counselor.

Keith Orin Danns—Cross

K. O. Danns - cross

MR. GLASSER: Yes, Your Honor.

Q. Mr. Danns, did you suggest to the man from Household Finance that you spoke to that you had outstanding debts at the time he asked you to fill out the financial statement?

A. Well, as I recall ----

Q. (Interposing) Did you let him know and did you tell him that you had other debts outstanding at that time?

A. I did sort of tell him that. I did sort of mention it to him. I was on my way out and getting ready to sit down and put down the others.

I think I did say to him that I have other debts to put down here, and he said, "Just put down 'I have no other debts,' which I did.

MR. GLASSER: All right; that is all, if

Your Honor pleases.

REDIRECT EXAMINATION

BY MR. WEINICK:

Q. Mr. Danns, how many times did you visit the office of Household Finance with reference to the loan here in question?

A. I was there at least twice, sir.

Keith Orin Danns—Redirect

K. O. Danns - redirect

THE COURT: On this particular loan?

That is what he asked you about.

Q On this particular loan?

A On this loan, here do you mean?

Q Yes, I do.

A I would say about twice, sir.

Q And isn't it a fact, Mr. Danns, that you actually took these papers home to your wife to sign?

A I am going to answer this and say that it is possible, sir, because on occasions before they had mailed papers to me.

Q I didn't ask you about the situations before. I asked you, isn't it a fact that on this particular loan you took these papers home to your wife to sign, Mr. Danns?

A To be honest, sir, I definitely can't recall.

Q But you did do that in the past, did you?

A I have had papers mailed to my home in the past, and I have taken papers back with me, yes.

MR. WEINICK: I have no further questions, Your Honor.

THE COURT: Does the financial statement include the wife's signature?

MR. WEINICK: It does not, Your Honor. Normally it would be separate as to the wife, but I do not possess it in my file, so I would not make any statement to that effect, sir.

THE COURT: Do you have any further questions of this witness, Counselor?

MR. GLASSER: No, Your Honor; I do not.

THE COURT: Then, you may step down,

Mr. Dannels.

Subscribed and sworn to before me
this day of , 1976.

MR. WEINICK: I now call Mr. Tillinghast
to the stand.

G E O R G E A . T I L L I N G H A S T, residing
at 1960 East 19th Street, Brooklyn, New York,
called as a witness in behalf of the Plain-
tiff, being first duly sworn by the Bank-
ruptcy Judge, testified as follows:

DIRECT EXAMINATION

George A. Tillinghast—Direct

G. A. Tillinghast - direct

BY MR. WEINICK:

Q Mr. Tillinghast, are you employed by the Household Finance Corporation?

A Yes, I am.

Q In what capacity, sir?

A As manager.

Q At what branch, sir?

A At 163-18 Jamaica Avenue, Jamaica, New York.

Q And were you still employed by that branch on January 24, 1975?

A Yes, I was.

Q And is that the office which made the loan to Mr. Danms?

A Yes, it is.

Q Did there come a time in the course of your duties when you were called upon to approve or to disapprove a loan to Mr. Danms on that date?

A Yes, sir.

Q And did you so approve the loan, Mr. Tillinghast?

A Yes, I did.

Q And in approving the loan did you rely on the financial statement marked Plaintiff's Ex-

George A. Tillinghast—Direct

G. A. Tillinghast - direct

hibit 2?

A. Yes, sir; I did.

Q. Would you have made this loan or extended credit to Mr. Danns if you had known that the Bankrupt was indebted to Beneficial Finance for approximately \$1,000.00, to Ford Motor Company for approximately \$3,100.00, to the Chemical Bank for approximately \$3,100.00, to the First National City Bank for approximately \$2,900.00, to Macy's for approximately \$1,000.00 and to W.T. Grant & Company for approximately \$953.00, Mr. Tillinghast?

A. The answer is, no.

Q. Does the Household Finance Corporation maintain certain books or records in the normal course of its business?

A. Yes, it does.

Q. Do you have such book or record relating to Mr. Danns account?

A. I have.

Q. Can you tell me from your books and records, what is the balance due to Household Finance from Mr. Danns, Mr. Tillinghast?

George A. Tillinghast—Direct

G. A. Tillinghast - direct

A. It is \$2,189.31.

Q. And when does that include interest from?

A. From December 3, 1975.

Q. From December 3, 1975?

A. Yes, from December 3, 1975, from the date of the last payment.

Q. And are you reading from a card now?

A. Yes, I am.

Q. Is that the record kept in the normal course of the business of Household Finance?

A. Yes, it is.

Q. And who makes the record on that card?

A. A computer.

Q. And are those records made by an employee of Household Finance?

A. Yes, they are.

Q. And are they made at the time of each transaction?

A. Yes, sir.

Q. And is it the regular course of business to maintain such a record?

A. Yes, it is.

MR. WEINICK: I offer this record into

George A. Tillinghast—Direct

G. A. Tillinghast - direct
evidence, if Your Honor pleases.

THE COURT: Mr. Tillinghast, how much did the Bankrupt actually receive at that time? As I understand it, this was a renewal of a pre-existing loan. How much fresh cash did the Bankrupt receive at that time?

MR. WEINICK: Judge, I would respectfully object to the question on the ground that that has not been put forth in the pleadings.

THE COURT: What is the ground of your objection?

MR. WEINICK: On the ground that this has not been raised in the pleadings.

THE COURT: Raised by whom?

MR. WEINICK: Raised by the Defendant in the pleadings, Your Honor.

THE COURT: Do you mean, as an affirmative defense?

MR. WEINICK: Yes, sir; that is correct.

THE COURT: I do not think that holds pursuant to the decision rendered in this

George A. Tillinghast—Direct

G. A. Tillinghast -direct

district by the District Court judge. I have to make a finding, and I can permit an amendment to the pleadings. This is a Court of equity. Would you give me that figure, please?

THE WITNESS: The approximate figure was \$490.00, sir.

THE COURT: Why do say "approximate"? I want the actual figure that was advanced in cash to Mr. Danns at that time.

THE WITNESS: I would say in looking at this card that it was \$483.00 to be exact.

THE COURT: And that is how much you actually turned over to Mr. Danns in fresh funds at that time?

THE WITNESS: Yes, sir; that is correct.

BY MR. WEINICK:

Q Mr. Tillinghast, did the Bankrupt also receive in accordance with the proceeds of this loan two insurance policies?

A Yes, sir; he did.

Q Will you tell me what those insurance policies were, and the amount of each policy?

George A. Tillinghast--

G. A. Tillinghast -

A. There was life insurance ----

Q (Interposing) And how much was
sir?

A. It was \$44.13.

Q And what else?

A. An accident and health insurance, also.

Q And how much was that sir?

A. It was \$77.96.

Q So that if my mathematics is correct,
the BANKRUPT received a total of \$122.09 in the
form of insurance; is that correct, sir?

A. This would be included in the amount of
money he received.

Q Well, he would receive the cash that
you spoke of, the \$483.00, plus we would have
paid the insurance company, would we not, the sums
mentioned here by you?

A. Yes, that is correct.

THE COURT: Who is the named beneficiary
in the life insurance policies?

THE WITNESS: Are you asking me that
question, Judge?

THE COURT: Yes, I am.

George A. Tillinghast—Direct

G. A. Tillinghast - direct

THE WITNESS: Household Finance Corporation.

THE COURT: Then, as to that expenditure the Court disallows it. Now, what about the other policy?

THE WITNESS: Household Finance would be reimbursed for the accident and health payment while the person was out ill.

THE COURT: And who is the named beneficiary in that policy? Was it not the Bankrupt, the borrower?

THE WITNESS: Yes, that is correct.

THE COURT: But there was an assignment over; isn't that so?

THE WITNESS: Yes, sir.

THE COURT: So, that the ultimate beneficiary would be the finance company; isn't that so, Mr. Tillinghast?

THE WITNESS: Yes, sir; that is correct.

THE COURT: Then, it is disallowed.

BY MR. WEINICK:

Q Mr. Tillinghast, you heard the Bankrupt testify, did you not?

George A. Tillinghast—Direct

G. A. Tillinghast - direct

A. Yes, I did.

Q. And you heard him testify about the fact that he alleges he received a check prior to filling out the financial statement, did you not?

A. Yes, sir; I did.

Q. Can you please tell me what you know about this, if anything?

A. Well, it is our policy to grant the loan due to the person's ability to pay, taking into consideration his debts that he has outstanding. I have an assistant who usually writes up the loans and puts them on applications, and brings them to me with the financial statements.

I look them over. If all things are correct, and if in my judgment the man is worthy of the loan, then I grant the loan. In other words, then, the loan is not approved until you had seen the financial statement; is that correct?

A. That is correct.

Q. Who has the authority in your particular office to make out a check for whatever proceeds are to be given for loans?

A. I do.

George A. Tillinghast—Direct

G. A. Tillinghast - direct

Q And who signs that check?

A I do.

Q Did you sign that check prior to the time that you saw this financial statement?

A No, sir; I did not.

MR. WEINICK: Your witness.

THE COURT: Then, you dispute the testimony of the Bankrupt that he received the check prior to filling out the financial statement, do you?

THE WITNESS: Yes, sir; I do.

THE COURT: You may cross examine, Counselor.

CROSS EXAMINATION

BY MR. GLASSER:

Q Mr. Tillinghast, do you recall this specific case?

A When you say, do I recall it ----

Q (Interposing) Do you recall this specific loan, Mr. Tillinghast? You have stated your general policy.

A I can't say that I recall the individual or the day it happened; no, I can't say that.

George A. Tillinghast—Cross

G. A. Tillinghast - cross

THE COURT: He is talking about this individual loan now.

THE WITNESS: I do recall the loan. I know the loan and I have reviewed it.

Q Do you recall the facts as they developed or the sequence of events that occurred prior to the granting of this specific loan, as opposed to your general policy?

A. Pardon me, sir?

Q Do you recall the facts as they developed or the sequence of events that occurred prior to the granting of this specific loan, as opposed to your general policy, Mr. Tillinghast?

A. When I recall the sequence of events I recall the application, and the format is shown to me showing the man's debts, showing the man's debt structure, and therefore, I make a decision as to whether to grant the loan or not.

Q So that you don't remember this individual loan, do you?

MR. WEINICK: The witness did not say that, Your Honor.

MR. GLASSER: That is what he implies.

George A. Tillinghast—Cross

G. A. Tillinghast - cross

THE WITNESS: No, sir.

Q Let me ask you this question, Mr.

Tillinghast: This specific loan, do you remember it? Do you remember giving a check to the person who was under you to hand to Mr. Danns?

A Not specifically this particular day or time.

MR. GLASSER: All right that is all,
Your Honor.

MR. WEINICK: I have no other questions
of this witness, if Your Honor please.

THE COURT: Then, you may step down, Mr.
Tillinghast.

Subscribed and sworn to before me
this day of , 1976.

MR. WEINICK: I now call Mr. Ament.

R I C H A R D A M E N T, residing at 121 Mount
Joy Avenue, Freeport, Long Island, New York,
called as a witness in behalf of the Plain-
tiff, being first duly sworn by the Bank-
ruptcy Judge, testified as follows:

DIRECT EXAMINATION

Richard Ament—Direct

R. Ament

BY MR. WEINICK:

Q Mr. Ament, are you employed by Household Finance Corporation?

A Yes, I am.

Q And were you so employed on January 24, 1975?

A Yes, I was.

Q In what office, sir?

A At 163-18 Jamaica Avenue, Jamaica, New York.

Q And that is the office which made this loan here in question, is it not?

A Yes, it is.

Q Did you in any way handle that loan?

A Yes, I did.

Q Will you tell me the manner in which you handled it?

A I took the financial statement and the final papers.

Q Do you mean that you witnessed the financial statement?

A Yes, I witnessed the financial statement.

Q Can you tell me whether Mr. Danms was given papers to take home to his wife to sign?

Richard Ament—Direct

R. Ament · Direct

A. He was.

Q. So that Mr. Danms' statement that this was done all in a rush is not quite the whole truth, is it?

A. No, sir; it is not.

Q. Were you present at the time Mr. Danms testified in this Court, Mr. Ament?

A. Yes, I was.

Q. And did you hear Mr. Danms testify to the effect that the financial statement was executed after he had received the check?

A. I did.

Q. Will you tell me what you recall, if anything, about that circumstance?

A. Yes. The application was completed, and the financial statement was then given to the customer to fill out before it was presented to the manager for approval. So that that could not have happened.

Q. So that that could not have happened?

A. No, so that that could not have happened.

Q. Mr. Ament, I show you Plaintiff's Exhibits 1 and 2 in evidence, and ask you whether

R. Ament - direct

you signed them (handing papers to the witness)?

A. I did, as a witness.

Q. As a witness?

A. That is correct.

Q. And did you sign that in the same manner in both places?

A. No, I did not.

Q. And what does that indicate to you?

A. It indicates to me that I signed them at two different times.

Q. And is it your testimony that you then presented this financial statement to Mr. Tillinghast for his approval prior to the issuance of the check?

A. Yes, it is.

MR. WEINICK: I have no further questions,

Your Honor.

THE COURT: You may cross examine.

CROSS EXAMINATION

BY MR. GLASSER:

Q. Mr. Ament, do you recall the facts of this specific loan?

A. I recall taking the financial statement and

Richard Ament—Cross

R. Ament - cross

signing the customer out.

Q What do you mean by : "signing the customer out"?

A Completing the transaction, and presenting him with the check.

Q Did you give him the check before or after you helped him to complete the financial statement?

A Say that again, please?

Q Did you give Mr. Danms the check before or after you helped him to complete the financial statement?

MR. WEINICK: I object to that question, if Your Honor please, that he helped him to complete the financial statement.

THE COURT: Objection sustained.

Q Did you give Mr. Danms the check before or after you gave him the financial statement?

A The check was given after the financial statement was filled out by him.

Q You were the individual who worked on this matter; is that correct?

A (No response.)

Richard Ament—Cross

R. Ament -- cross

Q Were you the man who worked on it at that time?

A When he came into the office, yes, I was.

Q You were the man who dealt with him at that time, then?

A Yes, I was.

Q You were out front, you might say, then?

A Yes, I was.

Q Did you speak to him at all prior to his coming to your office?

A I don't remember.

Q Do you recall how many times he came to your office in connection with this loan?

A It would be at least twice, to get the application and some papers to take home to his wife.

Q At that time did you take an application from him?

A We helped him to fill out the application.

Q Did you deal with Mr. DANNS in the past on his past loans with Household Finance?

A Not that I remember.

Q Do you know his brother at all?

A No, I don't.

R. Ament - cross

THE COURT: Who is that?

Q His brother.

A No, I don't.

Q Or any members of his family?

A No, I don't.

MR. GLASSER: All right; that is all,

Your Honor.

REDIRECT EXAMINATION

BY MR. WEINICK:

Q I just have one or two more questions, Mr. Ament. Did you request Mr. Danns to write the words "I have no other debts" on this financial statement?

A Yes, I did.

Q Did you prior to that time inquire of him whether he had any debts?

A Yes, of course.

Q And what was his response to you?

A He said, "I have no other debts."

Q And did you ask him to write that down when he told you that?

A I did.

MR. WEINICK: I have no other questions.

Richard Ament—Redirect

.. Ament - redirect

if Your Honor please.

BY THE COURT:

Q How many debts had he told you about on his application?

A Just Gertz.

Q And that was it?

A Yes, sir.

Q Well, wouldn't that alert you to the fact that he wasn't telling you the entire truth?

A No, sir. I had no reason not to believe him.

Q Did you have your records in front of you in connection with his prior debts?

A It was the normal course of business to have the former records in front of me.

Q And did he have any other debts listed on them?

A No, he did not.

MR. WEINICK: I have no other questions of this witness, if Your Honor pleases.

THE COURT: Do you have any motions at this time?

MR. GLASSER: Yes, your Honor. I make a motion to dismiss the complaint of the ground

Keith Orin Danns—Direct

R. Ament - redirect

that the Plaintiff has failed to make out a prima facie case.

THE COURT: The motion is denied.

MR. GLASSER: I call Mr. Danns as my witness.

K E I T H O R I N D A N N S, the Bankrupt herein, called as a witness in his own behalf, having been previously duly sworn by the Bankruptcy Judge, testified as follows:

DIRECT EXAMINATION

BY MR. GLASSER:

Q Mr. Danns, approximately one or two days before January 24, 1975 did you telephone the Household Finance Corporation office at 163-19 Jamaica Avenue, in Jamaica?

A Yes, I did.

MR. WEINICK: Your Honor, I object to the question on the ground that counsel is testifying, and he is not asking a question.

THE COURT: Well, I will let him do it for a period of time. Objection overruled.

Q And with whom did you speak at that time?

A I spoke to the employee of the company at that

Keith Orin Danns—Direct

K. O. Danns - direct

time.

THE COURT: Can you identify him, Mr.

Danns?

THE WITNESS: No, sir.

THE COURT: Could it have been one of the two individuals who have testified here this afternoon?

THE WITNESS: In my previous dealings I know for a fact that it definitely was not the manager.

Q And what did you speak about at that time?

A I requested a loan at that time, a renewal of my loan.

Q And what were you told at that time?

MR. WEINICK: Judge, I object to that. The witness has already testified that he was told to come in.

THE COURT: I know he has. What is the purpose of this testimony, counselor?

MR. GLASSER: The purpose of this testimony, Your Honor, is to set out the facts in question in a chronological order in order to

Keith Orin Danns—Direct

K. O. Danns - direct

adduce the evidence that we have.

THE COURT: Won't you accept the fact that I do not have to have repetitious testimony? Whether he testified in a previous capacity or in his own behalf, it is still repetitious. We know that two days before they told him to come down and that it was all right.

Is that what they told you, Mr. Danns?

THE WITNESS: Yes, sir.

THE COURT: Didn't they tell you, "Come on down"?

THE WITNESS: Yes, sir; they did.

THE COURT: Now, we have him down there and we have the telephone call. So, go ahead to your next point.

MR. GLASSER: I still have to pursue this telephone conversation, Your Honor.

THE COURT: You may, Mr. Glasser.

Q And what did you discuss at the time or during the time of this telephone conversation in addition to what has been testified to already, Mr. Danns?

Keith Orin Danns—Direct

K. O. Danns - direct

MR. WEINICK: I object to that, if Your Honor please, on the ground that he has not identified to whom he spoke at that time. He might have spoken to the janitor there, and not necessarily one of our people.

THE COURT: Objection overruled.

THE WITNESS: Will you repeat the question, please?

Q Yes. What did you discuss with this person that you spoke to at Household Finance with regard to this loan in addition to what has been testified to here already?

A. (NO reponse.)

Q In other words, Mr. Danns, what was the nature of the conversation other than the fact that you knew you would get a loan with Household Finance Corporation?

MR. WEINICK: Judge, he is still testifying, and I object to that.

THE COURT: There is no jury here. Objection overruled.

A. To the best of my knowledge I recall asking to have the loan renewed, and as I testified beofre I

Keith Orin Danns—Direct

K. O. Danns - direct

recall him, you know -----

BY THE COURT:

Q (Interposing) Whoever you spoke to said that it was all right to come on down; is that so?

A Yes, sir.

Q And did you then go there?

A Yes, I did.

Q And what happened at the time you went there?

A I went in there and I filled an application out.

Q Can you identify the person who gave you the application?

A I will say that the other gentleman's face is very familiar to me.

Q Mr. Ament, do you mean, not the manager, but the other witness from Household Finance?

A Yes. It is not the manager, but it is the other witness, sir. However, I can't be sure that that is the exact person that I spoke to at that time.

BY MR. GLASSER:

Q And what happened when you went there?

Keith Orin Danns—Direct

K. O. Danns - direct

MR. WEINICK: Judge, he is testifying again, and he is putting words into the witness's mouth.

Q Did you have a discussion at that time?

A Yes, we did.

Q And what was the nature of the discussion that you had at that time?

A Just to fill out the application, and that he needed my wife's signature.

THE COURT: Did he give you another form for your wife's signature to take with you?

THE WITNESS: Judge, to be honest with you I don't recall.

THE COURT: You do not recall that?

THE WITNESS: No, I don't recall.

Q Did your wife go back with you for the loan, to sign for the loan?

A To the best of my knowledge, yes.

Q And at that time what was the sequence of events, on January 24, 1975, the actual day that you got the loan from the Household Finance, Mr. Danns?

A I went in there ----- first, I would like to

Keith Orin Danns—Direct

K. O. Danns - direct

make a point. I would like to have this quite clear in my mind, the fact that I am very confused as to whether or not on that particular day ---- I know that my wife came in, and I know that on every occasion whenever I got a loan with Household Finance Corporation they needed her signature.

I do not recall, you know, whether or not --- well, she came in. She came in there that day as demanded by them, and we went across to the booth, we were called into a booth, and you know, he brought the papers in because I had already signed the ones that I had filled out myself, and he still had a batch of other papers, and my wife had to sign those papers. He gave me, you know, something to fill out regarding my furniture. I can recall something to fill out regarding my wages, and then I recall also when all this was finished that he left.

Then he came back and he had the check with him, and he gave me the check, and me and my wife were getting ready to go. Then, he said, "There is one more form to be filled out," which happened

K. O. Danns - direct

to be this financial statement. So, I went back and half standing I filled it out. Then he said, "Just put down here 'I have no other debts.'" I did intimate to him that I had some more stuff to put on there, and he did say to me, "Just put down I have no other debts."

However, I already had the check at that time.

Q Were you in a rush to leave there at the time you had the check?

A Yes. It was my lunch hour, and time was of the essence.

Q Were you in a rush about the whole process of getting the loan from the very beginning? Did you rush them, Mr. Danns?

A No, I didn't rush them.

MR. GLASSER: All right; that is all, if Your Honor please. The Bankrupt rests.

THE COURT: Do you rest?

MR. GLASSER: Yes, sir.

THE COURT: Do you have any other questions of this witness?

MR. WEINICK: No, Your Honor; I do not.

THE COURT: Then, you may step down, Mr. Danns.

)

THE COURT: (8) The court having weighed the

Decision

evidence, and having examined into the credibility of the witness's testimony, finds that the Plaintiff has sustained its burden of proof showing that the financial statement was materially false in writing, and was given with the intent to deceive, and that it was relied upon by the Plaintiff.

Judgment is awarded in the sum of the fresh cash received by the Bankrupt at that time, to wit, the sum of \$483.00, with appropriate interest thereon. X

MR. WEINICK: Thank you, Your Honor.

- - - -

(TRIAL ON COMPLAINT OF HOUSE-
HOLD FINANCE CORP. AGAINST THE
BANKRUPT ON DISCHARGEABILITY
OF DEBT, CLOSED.)

A-73
Decision

W I T N E S S E S

	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>
1. Keith Orin Danns	5	16	26
2. George A. Tillinghast	28	37	
3. Richard Ament	39	42	45
4. Keith Orin Danns	47		

* * * *

E X H I B I T S

<u>Number</u>	<u>Description</u>	<u>Page</u>
Plaintiff's Exhibit 1 in evidence.	Note dated January 24, 1975 in the amount of \$3,261.96, signed by Keith Orin Danns.	6
Plaintiff's Exhibit 2 in evidence.	Doc ent entitled "financial state- ment" dated January 24, 1975, signed by Keith Orin Danns.	13

* * * *

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A-75

Exhibit 1—Note dated 1/24/75



LICENSED AS A LICENSED LENDER
UNDER ARTICLE IX, BANKING LAW

LOAN NO.

DEBTOR (Name, Address and Soc. Sec. No.)

70191-7

DANNS, Keith & Cicely
16840 127 Ave
Rochdale Village NY 11434

099463952

JAMAICA, NEW YORK 11432
PHONE: 526-2349

SYSTEM

DATE 1 24 75	FIRST INSTALLMENT DUE DATE: 2 24 75	OTHERS: SAME DAY OF EACH MONTH	FINAL INSTALLMENT DUE DATE: 1 24 78	FIRST: 90.61	INSTALLMENTS: OTHERS 90.61
TOTAL OF PAYMENTS: \$ 3261.96	FINANCE CHARGE: \$ 761.96	AMOUNT FINANCED 2500.00	GROUP CREDITOR INSURANCE CHARGES: LIFE: 44.13	DISABILITY: 77.96	
TOTAL AMOUNT PAYABLE IN 36 MONTHLY INSTALLMENTS	UNIT CHARGE: (For rebate, default, or deferment charges) 1.1440	OFFICIAL FEES 2.50	ANNUAL PERCENTAGE RATE 18.182 %	CHattel MORTGAGE yes	WAGE ASSIGNMENT yes

CREDIT LIFE OR DISABILITY INSURANCE is not required to obtain this loan. If borrowers desire credit life insurance or credit life and disability insurance, the charge(s) therefor stated above will be included in the Amount Financed and the insurance covers the borrower named in the certificate(s) of insurance delivered herewith. No charge is made for credit insurance and no credit insurance provided unless one of the borrowers signs the appropriate statement below:

I desire credit life and disability insurance *1/24/75* I desire credit life insurance only I do not want credit life or disability insurance

CANCELLATION: Insured debtor(s) may, within 5 days from this loan's date, cancel all (but not part) of insurance elected above by returning all insurance certificates received in connection with this loan to the office where it was made and having all parties obligated on this loan agree in writing to such cancellation. Upon cancellation, full cash refund of insurance charges stated above will be made.

TOTAL OF PAYMENTS is the Amount Financed plus the Finance Charge and is the amount required for payment according to schedule.

AMOUNT FINANCED includes any Official Fees and any charge for Credit Insurance and is the Principal Amount of Loan.

OFFICIAL FEES are paid to public officials for perfecting or releasing security.

FINANCE CHARGE—CONTRACT RATE—ANNUAL PERCENTAGE RATE. The Finance Charge is precomputed on scheduled unpaid balances of the Amount Financed at the contract rate of 2 1/4% per month on that part of the unpaid balance not exceeding \$100, 2% per month on any unpaid balance exceeding \$100 but not exceeding \$300, 1 1/2% per month on any unpaid balance exceeding \$300 but not exceeding \$900, 1 1/4% per month on any remainder, subject to refund for prepayment in full and to default and deferment charges as provided herein, in accordance with Section 352, Article 9 of the New York Banking Law, printed on the reverse. The Annual Percentage Rate when computed by the actuarial method for payment according to schedule, would yield the Finance Charge, but it is not the Contract Rate.

REFUND FOR PREPAYMENT IN FULL. The borrower may prepay the loan in full and receive a refund of Finance Charge equal to one Unit Charge for each full month that each installment is prepaid as a result of prepayment in full. If prepayment occurs before the first installment date, an additional refund of 1/30 of the Unit Charge shall be made for each day from the date of prepayment in full to the first scheduled installment date. If three or more, but not all, installments are prepaid in full at any one time, the borrower shall receive a special refund of an amount which shall be equal to the refund that would be required for prepayment in full one full month prior to the final due date multiplied by the total number of full months such installments are prepaid.

DEFAULT AND DEFERMENT CHARGES: If more than 1/2 of any installment is in default more than 5 days, the holder hereof may either (a) collect one Unit Charge for each such default or (b) defer all unpaid installments one or more full months and collect a deferment charge, where no default charge has been collected, equal to one Unit Charge on all then unpaid installments for each full month payment is deferred. When a deferment charge is collected, the due date of each unpaid installment shall be deferred by the number of months for which such deferment charge is collected and thereafter any required rebate of Finance Charge shall be computed from the deferred due dates instead of the due dates originally contracted for.

SECURITY. This loan is secured by this note and any credit insurance for which a charge is made. Unless "No" appears under "Wage Assignment" above, there is an assignment on your salary and wages. Unless "No" appears under "Chattel Mortgage" above, there is a Chattel Mortgage Security Agreement on household and consumer goods belonging to borrowers and located at their address stated above and any other property listed below. Any property covered by the Chattel Mortgage Security Agreement may secure future or other indebtedness.

Household goods and all consumer goods

Make Year Model Model No. Motor No. License: State Year Number

IN CONSIDERATION of a loan made to them jointly by the corporation named above at its above office, the undersigned hereby jointly and severally promise, subject to the terms hereof, to pay to the order of said corporation at its above office the Amount Financed with the Finance Charges at the contract rate as stated above plus any default or deferment charges which may accrue as stated above.

Payment shall be made in consecutive monthly installments as above indicated beginning on the stated due date for the first installment. When the holder's office is not open for business on a stated due date, that due date shall be the next succeeding business day. Payment in advance may be made in any amount. Default in paying any installment shall, at the option of the holder hereof and without notice or demand, render the entire sum remaining unpaid at once due and payable, less any required refund of Finance Charge.

A copy of this document has been delivered to the borrower as required by law. The construction, validity, and effect hereof shall be governed by the laws of New York, except as modified by the Federal Consumer Credit Protection Act.

Witness:

[Signature]

[Signature] (SEAL)
[Signature] (SEAL)

ORIGINAL

Exhibit 2—Financial Statement

Loan Number

70191-7

PLEASE READ THESE INSTRUCTIONS

This statement must be in applicant's own handwriting. Before completing and signing this statement please review all your debts carefully. Be sure you have disclosed all your debts of all kinds and that the facts stated in this statement are correct. Do not, under any circumstances, omit any debts. We rely upon your good faith and the truth of your representations.

FINANCIAL STATEMENT

The undersigned having applied to HOUSEHOLD FINANCE CORPORATION or one of its subsidiary corporations for a loan of \$ 2500, for 36 months, for the purpose of showing his, her, or their ability to repay the same, and inducing such corporation to make said loan, hereby represent and warrant that the following is a full, complete, and correct list of all debts and liabilities of and other claims against them and each of them on 1/24/75. (If no debts, so state)

(Month—Day—Year)

		AMOUNT OWED	
		DOLLARS	CENTS
Present loan balance with HOUSEHOLD FINANCE CORPORATION and subsidiaries		2019	77
APPLICANT(S) MUST LIST ALL DEBTS — DO NOT OMIT ANY DEBTS			
(Disputed and so-called outlawed claims must be included.)			
Name of creditor	Nature of debt		
GURTL		\$ 50	—
I HAVE NO OTHER	DEBTS.	\$	
		\$	
		\$	
		\$	
		\$	
		\$	
		\$	
		\$	
		\$	
		\$	
		\$	
All debts and claims except Real Estate Contracts and Mortgages TOTAL		\$ 5069	77
Real Estate Contracts and Mortgages: (Give name of mortgage or contract holder and unpaid balance)		\$	
		\$	
HARRIS		\$	

WITNESS our hands and seals the day and year above set forth.

Executed and delivered in the presence of:

Richard G. Gatto
Witness

Mark O. Gatto (SEAL)

(SEAL)

BY MAKING PAYMENTS PROMPTLY WHEN DUE YOU WILL AVOID ADDITIONAL CHARGES

Order of Bankruptcy Judge Parente

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

Bankruptcy No. 76 B 148

In re

KEITH ORIN DANNS a/k/a KEITH O. DANNS
a/k/a KEITH DANNS

Bankrupt,

HOUSEHOLD FINANCE CORPORATION

Plaintiff,

—against—

KEITH ORIN DANNS a/k/a KEITH O. DANNS a/k/a
KEITH DANNS

Defendant.

An application having been made by Household Finance Corporation (HFC) a creditor of the defendant-bankrupt to declare the debt owing to it by the defendant-bankrupt in the amount of \$2189.31 non-dischargeable pursuant to Section 17 of the Bankruptcy Act as amended, and a hearing having been held on the aforesaid application before the undersigned on April 29, 1976 and the parties having appeared by Seymour R. Weinick, Esq. for the plaintiff and by Sachs & Spector Esqs. by Martin J. Glasser Esq., of counsel for the defendant and the proofs of the parties including exhibits having been taken and the Court having filed its decision after due deliberation, it is

ORDERED that the application of HFC pursuant to Section 17 of the Bankruptcy Act as amended to declare

Order of Bankruptcy Judge Parente

the debt due it in the amount of \$2189.31 by the defendant-bankrupt as non-dischargeable be and the same hereby is denied, except that the said application is granted to the extent only of the "fresh money" in the sum of \$483.00, and it is further

ORDERED that Household Finance Corporation of 277 Park Avenue, New York, N. Y. the creditor herein, have judgment against Keith Orin Danns a/k/a Keith O. Danns a/k/a Keith Danns of 168-40 127 Avenue, Jamaica, N. Y., the defendant-bankrupt herein, in the sum of \$483.00 together with interest thereon from January 24, 1976 in the sum of \$46.25 plus disbursements for stenographic fees in the sum of \$148.50, for a total of \$677.75.

Dated: Westbury, New York
July 2, 1976.

s/ C. ALBERT PARENTE
C. Albert Parente
Bankruptcy Judge

Opinion and Order of District Judge Neaher

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

In re KEITH ORIN DANNS, a/k/a
KEITH O. DANNS, a/k/a KEITH DANNS, :

76 B 148

Bankrupt, :

HOUSEHOLD FINANCE CORPORATION, :

Plaintiff, :

OPINION

-against- :

KEITH ORIN DANNS, a/k/a KEITH O.
DANNS, a/k/a KEITH DANNS, :

Defendant. :

-----x

APPEARANCES:

SEYMOUR R. WEINICK, ESQ.
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By MARTIN J. GLASSER, ESQ.

NEAHER, District Judge.

Household Finance Corporation ("HFC"), creditor for
unpaid loans, appeals from an order of Bankruptcy Judge C.
Albert Parente to the extent that it refused to deny the
bankrupt a discharge for the entire balance of his indebted-
ness to HFC. Bankruptcy Rule 801, et seq.

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On January 24, 1975 the appellee, Keith Orin Danns, already in debt to appellant HFC for \$2,019.37, applied for a "renewal" of his loan in order to obtain additional money. His request was approved and he executed a new note in HFC's favor in the total amount of \$3,261.96. The proceeds of this note, after being applied to the existing loan plus finance and other charges, left a balance of \$483.00 in new cash for Danns. As part of the transaction, Danns submitted a financial statement on which he showed other debts of only \$50.00, although in fact he was then obligated to other creditors for about \$10,729.

The bankruptcy judge found that the financial statement was false and given with the intent to deceive HFC and that HFC relied upon it in making the loan. The judge thereupon held the debt was non-dischargeable only to the extent of the new cash and awarded HFC judgment in the sum of \$483.00.

HFC appeals this ruling on the ground that the entire debt of \$3,261.96 should have been held non-dischargeable under section 17(a)(2) of the Bankruptcy Act. HFC contends that the statute expressly bars by way of exception the

discharge of a debt or for a debt which arises from "obtaining an extension or renewal of credit in reliance upon a materially false statement in writing respecting his financial condition." 11 U.S.C. §35(a)(2).

The Supreme Court has declared that exceptions to a discharge should be construed in the bankrupt's favor.

Gleason v. Thaw, 236 U.S. 558 (1915). In this case section 17(a)(2) would not appear to apply, for HFC did not show that Danms was delinquent in his payments on the prior loan and received an "extension" of time to pay it off or that he had been granted a renewal of a matured note. Furthermore, since New York Banking Law §352 requires the consolidation of loans from one creditor, "it is difficult to characterize the refinancing as being 'obtained' by the debtor within the meaning of Section 17(a)(2)." In re Ellis, 400 F. Supp. 1112 (S.D.N.Y. 1975). Therefore, it was not erroneous to find that the new cash represented the actual pecuniary loss flowing from reliance upon the fraudulent financial statement.

The result might have been different had the record shown a true "extension" or "renewal" of credit in reliance upon the financial statement, or that Danms requested the

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consolidation of the loans because he would thereby benefit. In the absence of such evidence, only the new cash is non-dischargeable, for "it would be illogical to except from discharge that portion of the pre-existing debt which is untainted by fraud." In re Soika, 365 F. Supp. 555, 556 (W.D.N.Y. 1973). This approach has found the most favor among the courts of this circuit. See, e.g., In re Stanzione, 74 B 138 (E.D.N.Y. May 2, 1975); In re Ellis, supra; In re Soika, supra.

The bankruptcy judge's ruling is affirmed.

SO ORDERED.

/s/ EDWARD R. NEAHER

U. S. D. J.

Dated: Brooklyn, New York
January 17, 1977